IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 492 of 2007

Judgement reserved on:

Date of decision: 3.10.2007.

State of H.P. **…..Petitioner- Appellant.**

Vs.

Liaq Ram & ors. **…. Respondents.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the petitioner : **Mr. M.L.Chauhan, Addl. Advocate General.**

For the Respondents : **Mr. Romesh Verma, Advocate.**

Kuldip Singh, Judge (Oral).

This is an application of the State for grant of leave to file an appeal against judgement of acquittal, dated 22.5.2007, passed by the learned Sessions Judge, Shimla in Crimiinal Appeal No. 48-S/10 of 2005. The respondents were prosecuted, under Section 33 of the Indian Forest Act on the allegations that on 27.6.2001 Vipin Lal, Beat Guard, Marawag beat alongwith Ram Lal, Chowkidar was on patrolling duty of forest Ghareen. The respondents were caught red handed while constructing a road through government land at Ghareen. The respondents confessed, damage report Ex. PW 1/A was issued, but respondents refused to sign the damage report. The

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Whether the reporters of the local papers may be allowed to see the Judgment?

respondents took the stand that road falls in their own land and they have not constructed any road illegally through the government land. The respondents were prosecuted under Section 33 of the Indian Forest Act, they did not plead guilty, their statements were recorded, under Section 313 Cr.P.C. in which they pleaded their innocence. The trial court convicted and sentenced the respondents on 21.10.2005. The respondents filed an appeal against their conviction and sentence, which has been allowed by the learned Sessions Judge, Shimla, hence application of the State for leave to file an appeal.

2. Heard and perused the record. PW 1 Ram Lal, Chowkidar has stated that on 27.6.2001, he was on patrolling duty alongwith Forest Guard Vipin Lal at Ghareen and found that respondents have constructed road through the government land, damage report Ex. PW 1/A was prepared by Vipin Lal, which was not signed by the respondents. He has also stated that road was not constructed by the respondents in his presence and no demarcation of the road was got conducted. PW 2 Man Dass, Dy. Ranger, Marawag beat has stated that he recorded the statements of the witnesses and prepared site plan Ex. PW 2/A. In his cross-examination, he has stated that respondents made statements that road was not constructed on government land

3. PW 3 Vipin Lal has stated that he prepared damage report Ex. PW 1/A, but respondents refused to sign the *Iqbalnama* Ex. PW 3/A. He has stated in cross examination that respondents did not construct road in his presence. He has also stated that when he

reached the spot, the respondents were going towards their houses and place where the road was constructed was not demarcated protected forest but is Dehat. The damage report Ex. PW 1/A was prepared on 27.6.2001 but the complaint was filed in the court of Additional Chief Judicial Magistrate, Chopal on 2.7.2005. If a person commits an offence, under Section 33 of the Indian Forest Act, he is liable for imprisonment for a term which may extend to two years or with fine which may extent to Rs.5000/- or with both. Therefore, the limitation for taking cognizance of such offence by the court is three years under Section 468 Cr.P.C. In the present case, the complaint was filed after three years. There is no evidence on record, who broke the government land for construction of the road. There is no evidence that the road was constructed through demarcated protected forest land inasmuch as no demarcation for identification of the spot was carried out by the Revenue Agency. The learned Sessions Judge has taken a possible view from the material on record. As such, leave to file an appeal is rejected.

October 3, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**